Petition

81-847

No.

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1981

ROBERT MORI and SAM POLINO, on behalf of themselves and all others similarly situated,
Petitioners,

VS.

~~INTERNATIONAL BROTHERHOOD OF BOILERMAKERS,~~
IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS LOCAL LODGE NO. 6 and
INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS, AFL-CIO,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether 29 USC § 411(a)(3) allows an international union to impose an increase in due rates payable by members working in a certain industry to local affiliates by a majority vote at international convention in the absence of a secret ballot vote or referendum of local union members.

2. Whether 29 USC § 411(a)(3)(A) and (B) provide mere alternatives by which dues payable by members to local affiliates may be increased.

3. Whether an international union by majority vote of delegates at convention may authorize the international president to determine dues rates paid by members to local affiliates without a secret ballot vote or referendum of the local membership.

4. Whether the practice of setting minimum local dues by delegates voting at an international convention authorizes the imposition of an increase in local dues payable by a minority of members at the rate of 2% of the gross income.

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INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS LOCAL LODGE No. 6 and INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS, AFL-CIO,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The petitioners Robert Mori and Sam Polino pray that a writ of certiorari issue to review the judgment and opinion in this matter by the United States Court of Appeals for the Ninth Circuit entered August 17, 1981.

OPINION BELOW

The opinion of the Court of Appeals (653 F2d 1267) appears as Appendix A to this petition. The judgment of

the District Court for the Northern District of California (482 F.Supp. 838) appears as Appendix B.

JURISDICTION

The judgment of the Court of Appeals was entered August 17, 1981. This petition is filed within 90 days of that date and the jurisdiction of this Court is therefore invoked pursuant to 28 USC § 1254(1).

STATUTORY PROVISIONS INVOLVED

This matter arises generally from an application of the Labor-Management Reporting and Disclosure Act of 1959 (29 USC § 401 et seq.). The specific sections of that legislation involved are:

1. 29 USC § 402(h) (LMRDA § 3(h))

> "Trusteeship" means any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws.

2. 29 USC § 411(a)(3)(A) and (B) (LMRDA § 101(a)(3))

> Except in the case of a federation of national or international labor organizations, the rates of dues and initiation fees payable by members of any labor organization in effect on September 14, 1959 shall not be increased, and no general or special assessment shall be levied upon such members, except—
>
> (A) in the case of a local labor organization, (i) by majority vote by secret ballot of the members in good standing voting at a general or special

membership meeting, after reasonable notice of the intention to vote upon such question, or (ii) by majority vote of the members in good standing voting in a membership referendum conducted by secret ballot; or

(B) In the case of a labor organization, other than a local labor organization or a federation of national or international labor organizations, (i) by majority vote of the delegates voting at a regular convention, or at a special convention of such labor organization held upon not less than thirty days' written notice to the principal office of each local or constituent labor organization entitled to such notice, or (ii) by majority vote of the members in good standing of such labor organization voting in a membership referendum conducted by secret ballot, or (iii) by majority vote of the members of the executive board or similar government body of such labor organization, pursuant to express authority contained in the constitution and bylaws of such labor organization; *Provided*, That such action on the part of the executive board or similar governing body shall be effective only until the next regular convention of such labor organization.

STATEMENT OF THE CASE

The petitioners and the class they represent are employed in construction and are rank and file members of Boilermakers Local 6 in San Francisco, a chartered affiliate of the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers (International). The geographic jurisdiction of Local 6 includes the western counties of California from Fresno to the Oregon border. The trade jurisdiction is the boilermakers' craft.

Both Local 6 and the International include members in the craft in several industries. Those employed in the construction industry comprise a small minority within both the Local and the International.

Because of the far-flung locations and intensity of construction projects, construction members have long paid "field dues" to the Local, over and above the regular monthly dues. Both the field dues and the regular dues rates have been determined by secret ballot votes of the Local membership until the events giving rise to this lawsuit. In August of 1977, the field dues rate was $4.00 per month and the Local dues were $12.50.

In August of 1977, the International convened its regular convention held once every four years. By a vote of delegates present and voting, the convention adopted a resolution amending the International Constitution. The relevant portion of that amendment is as follows:

> (a) There shall be established a Construction Division Fund, as a special purpose Fund of the International Brotherhood, to finance those Division activities set forth in Section 1(b) of this Article, which shall be administered in accordance with provisions of this Constitution.
>
> (b) All members or temporary non-members employed on construction or maintenance work on which field dues are payable shall pay to the Construction Division Fund, effective January 1, 1978, a field dues supplement in the amount of one half of one percent (0.5%) of the gross income received from such employment, which supplement shall be in addition to the Lodge established field dues. Such payments shall be made in accordance with procedures established by the International Secretary-Treasurer.

(e) Lodges with construction jurisdiction, effective January 1, 1978, shall charge field dues in that amount set forth in approved Lodge By-Laws but such amount shall be not less than two percent (2.0%) of the gross income of all members or temporary non-members employed on construction or maintenance work in the Lodge's jurisdiction unless a lesser amount is approved by the International President. They shall transmit to the International Secretary-Treasurer for deposit to the account of the Construction Division Fund the field dues supplement amount required by subsection (b) of this Section 3 and shall retain for deposit to the account of the Lodge the amount of the field dues collected.

Thus, the International has imposed its own dues of ½% of the construction members' monthly gross income to support the new International Construction Division. In addition, however, it has increased the same member's local dues by requiring him to pay 2% of his monthly gross income to the local Union. It is the latter provision that the Petitioners attack, and which they contend is violative of 29 USC § 411(a)(3)(A).

In the fall of 1977, in response to the above-described convention action, the membership of Local 6 adopted, by majority vote, a resolution directing the Local's chief executive to request that the International President (Bouy) not collect the 2% of their gross pay as Local dues. When Bouy denied the request the Local 6 membership, by majority vote, rejected the 2% field dues requirement altogether, and adopted Local bylaw changes deleting the 2½% requirement. The 2% was nonetheless collected until enjoined by the District Court.

Petitioners do not and have not attacked the validity of the increased dues payable to the International for administration of its Construction Division. The constitution of the International provides, *inter alia*, for the issuance of charters to local affiliates, grants authority to locals to set their own dues rates by membership vote above a minimum, exacts a per capita tax from the locals, provides for the election of local officers by local members, and recognizes a limited right of the International to impair local autonomy by trusteeship.

REASONS FOR GRANTING THE WRIT

1. THE DECISION BELOW RAISES IMPORTANT ISSUES OF FEDERAL LABOR POLICY AND IS IN CONFLICT WITH THE REASONING AND STATED PRINCIPLES OF THIS COURT APPLICABLE TO THOSE ISSUES

The essential holding of the Ninth Circuit here is that an increase in dues payable to local unions may be imposed by a majority of delegates at an international convention. Stated another way: a secret ballot or referendum vote of union members is *not* required before an increase in local dues may be imposed.[1]

The specific statute subject to interpretation here (29 USC § 411(a)(3)) is part of what Congress called "The Bill of Rights of Members of Labor Organizations".[2] It was the declared purpose of Congress to in part enact these laws to eliminate what it perceived to be a "disregard of the rights

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[1] Appendix A, attached.

[2] 29 USC § 411(a)(1) through (5).

of individual employees . . . as they relate to the activities of labor organizations . . .'[3] As discussed more fully below, it was the resolve of Congress and has been the interpretation of the courts that direct participation of the rank and file in the affairs of its union is a necessary adjunct of the purpose of the statute.

It seems self-evident that the power to impose local dues increases is an effective means of governing local activities. The question is thus presented whether an increase in exactions to operate the affairs of a chartered and otherwise autonomous affiliate must be left to the rank and file, or whether an international may by a vote of representatives set such increases and thus gain an appreciably greater degree of control of local activities than it would otherwise have.

In instances in which this Court has considered the application of the "Bill of Rights", it has emphasized the importance of rank and file participation in union affairs. *Hall v. Cole*, (1973) 412 U.S. 1, 7; 93 S.Ct. 1943, 1947;[4] *American Federation of Musicians v. Wittstein*, (1964) 379 U.S. 171, 182-183; 85 S.Ct. 300, 307.[5]

Contrary to the apparently adopted reasoning of this Court, the Ninth Circuit's decision effectively eliminates the direct participation of the rank and file on the vital question of their local dues. It thus clear that the issue here is

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[3] 29 USC § 401(b).

[4] "Title I . . . was specifically designed to promote the full and active participation of the rank and file in the affairs of the union."

[5] "The pervading premise of both these titles (Titles I and IV) is that there should be full and active participation by the rank and file in the affairs of the union."

of profound significance to the statutory purpose of the LMRDA, and that the court below contradicts in a significant way the approach and adopted principles of this Court on the subject.

2. THE DECISION BELOW IS AT ODDS WITH ACCEPTED PRINCIPLES OF LAW APPLICABLE TO LMRDA CASES

As observed by the decision of the Ninth Circuit, there are very few decisions specifically interpreting 29 USC § 411(a)(3).* One explanation for that dearth is the clarity of the statutory wording, i.e., local union dues may be raised only by secret ballot or referendum, and international dues by, *inter alia*, convention.

In *Wittstein, supra*, at page 181 (85 S.Ct. 306), this Court held that a vote on increases in *international* dues by means of weighted voting by delegates at a convention was permissible. That conclusion was based not only on a literal reading of the statute but also on the view that weighted voting is more consistent with the objective of internal union democracy than restricting each delegate to one vote no matter how large the constituency.

In *United Brotherhood of Carpenters v. Brown*, (CA 10, 1965) 342 F2d 872, an affiliated local union was placed in trusteeship by the international when it failed to raise its local dues and to affiliate with a council of local unions. (*Id* at p. 879) A district council of affiliated locals in Kansas had, by voice vote, required each of its member

*Appendix A-8.

local unions to impose a uniform $8.00 per month local dues. For at least one local (Local 201) this meant a $2.20 per month increase for the membership. When the local membership voted against such an increase and voted not to affiliate with the council, the international placed the local in trusteeship—removing all vestige of local government. The dues increase was then imposed and the district council's "per capita" dues were paid by the trustee.

The Court of Appeals for the Tenth Circuit held that the trusteeship was invalid because the international constitution failed to set forth any specific basis for trusteeship and because it was imposed for improper purposes—all in violation of 29 USC § 462. (*Id* at pp. 882-883) In reaching its conclusion, the court observed:

> The purpose of the Act [LMRDA] as a whole is not only to stop and prevent outrageous conduct by thugs and gangsters but also to stop lesser forms of objectionable conduct by those in positions of trust and to protect democratic processes within union organizations.

The decision goes on to recount the provisions of the "Bill of Rights of Members of Labor Organizations", noting their connection to the provisions of Title III[1] and concluding:

> Thus, the rights of individual members of a labor union are protected by federal statute with a view to allowing those members to conduct local matters with a minimum of outside interference. In short, local affairs are to be governed by local members under democratic processes. (*Id* at p. 883)

[1] 29 USC §§ 462-464.

In *Navarro v. Gannon*, (CA 2, 1967) 385 F2d 512, an international union interfered with local union meetings, presuming to take them over. The court concluded that the purpose of the "Bill of Rights" was to insure local self government, prohibiting interference from the international unless the exclusive provisions of Title III are employed. It was there held that "in the absence of such recourse, the autonomy of the local union should be our primary concern." (*Id* at p. 519)

In *McDonald v. Oliver*, (CA 5, 1976) 525 F2d 1217, the Fifth Circuit Court of Appeals held that the different sections of the LMRDA must be read together in order to properly apply any one section. (*Id* at pp. 1228-1229)

In the above cited decisions it is apparent that courts have settled on the following principles of law applicable to LMRDA cases:

(1) That the provisions of Titles I and III are interrelated;

(2) That local union affairs are to be determined by the local membership directly; and

(3) That the statutory objective of democracy is best preserved by enforcing the autonomy of local unions from the parent international, unless the basis for a trusteeship exists.

The decision of the lower court thus is contrary to well-established concepts applicable to LMRDA cases, and should therefore be reviewed by this Court.

3. THE DECISION BELOW IS IN CONFLICT WITH DECISIONS OF OTHER COURTS OF APPEAL

The Ninth Circuit here states that its decision is in 'apparent' conflict with the Fifth Circuit in *Steib v. New Orleans Clerks and Checkers Local 1497*, (CA 5, 1971) 436 F2d 1101 (Appendix A-6). The court below expresses a reluctance in holding that a conflict exists because of the court's reading of an earlier district court case, *White v. King*, (E.D. La., 1970) 319 F.Supp. 122. Specifically, the decision below asserts the *Steib* decision fails to identify the "source of the three cents check off retained by the local". (Appendix A-7.)

The *Steib* decision adopted the decision of the district court, and *specifically* addressed the question of the source of the three cent check off retained by the local. (*Steib, supra* at page 1103) As adopted, the Fifth Circuit held that the portion of the dues increases to be received by the local unions which were members of the district was invalid for failure to comply with the secret ballot requirements of 29 USC § 411(a)(3)(A). (*Id* at page 1106) The remaining three cents of the increase destined for the district was held valid because the district was governed by 29 USC § 411(a)(3)(B).[8]

In *King v. Randazzo*, (CA 2, 1965) 346 F2d 307, the Second Circuit considered the propriety of a dues increase imposed by and for a council (not a local labor organiza-

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[8]Here and elsewhere in its decision the court below apparently misunderstood the basis of Petitioners' case. It is precisely that local dues cannot be raised except as set out in 29 USC § 411(a)(3)(A). The decision below is confusing on that precise issue at Appendix A-7.

tion). While that court did not consider the question of whether a council or international may impose *local* dues, it did hold that the statutory requirements are exclusive of all other means of raising dues. (*Id* at page 310) In reaching that conclusion, the court observed that the evident purpose of the statute is

> . . . to place union dues more directly under the control of the union membership . . . [I]t is implicit in § 101(a)(3) that the power to elect officers was not considered by Congress to be an adequate substitute for more direct control over union dues. (*Id*)

The decision below relies in part upon *Ranes v. Office Employees Int'l Union*, (CA 7, 1963) 317 F.2d 915. (Appendix A-8 and A-9). The Ninth Circuit reads *Ranes* in support of the proposition that the practice of international unions setting "minimum" local dues was known and accepted by Congress at the time of enactment (*Id* at A-9) and that the authority to set "minimums" authorizes the dues increase at issue. (*Id* at A-10.)

Notwithstanding the apparent agreement of the decision below and *Ranes*, there exists a significant conflict. The *Ranes* decision considers only the question of whether an international may impose minimum local dues, but does not report whether that imposition had the effect of *increasing* the dues payable by the members to the local. Here, it was stipulated that the subject dues provision indeed increases the local dues payable by the construction industry members. In the undisputed meaning of the statute, the prescribed method of raising dues is not invoked unless the international's minimum dues rate in fact increases the dues payable by the member to the local.

It thus clearly appears that the decision below directly conflicts with the Fifth Circuit decision in *Steib, supra*; it impliedly conflicts with the Second Circuit decision in *King, supra*, and is not necessarily in agreement with the Seventh Circuit in *Raves, supra*. The matter therefore warrants review by this Court.

4. THE ISSUES INVOLVED REQUIRE A UNIFORM RULE

The decision below relies on what that court believes to be the traditional authority of international unions to impose minimum local dues. In doing so, it implicitly holds the subject dues increase to be a minimum. The District Court, however, specifically found that the 2% of gross dues to the local was not in fact a "minimum".

Assuming that an international union may impose a minimum local dues in the interest of financial integrity of its affiliates, may it impose *any* amount? If the subject dues increase is a minimum rate of dues, then what are the limits of the concept? If the decision below stands would not an international be empowered to avoid the secret ballot vote of the membership altogether?

The distinction between local dues, international dues and *per capita* dues has never been made clear by court decisions. Local dues are the regular, usually monthly, payments made by members to defray the cost of running the local union. *Per capita* dues are payable to the international by the local based upon the number of members in the local. It is also traditional that a local union pays *per capita* dues

to intermediate bodies such as district councils. A few internationals have charged "international dues", payable directly by the members to the international, usually for some specified purpose. The legal requirements for increasing *per capita* or international dues is not an issue in this proceeding.

In addition to the questions relating to what is or is not a minimum local dues requiring a uniform rule, the discretion granted the International President by the offending amendment must also be reviewed. The resolution of the 1977 convention not only increased the local dues for construction members, it also gave the International President the unfettered discretion to reduce the rate as he sees fit. The decision below approves of this arrangement, concluding that no evil motivation was demonstrated by Petitioners. Yet, the statute and case law make no such requirement.

The question is thus posed whether 29 USC § 411(a)(3) is the exclusive method by which dues rates may be set, or whether a single person on the international level may set them so long as he acts without an evil motive. Given the important role of organized labor in American life, a review of the decision below is required to establish a uniform rule as to whether the statutory requirements are exclusive.

It should be obvious that the question of dues rates and how they are set is central to the issue of how democratic unions must be under the law. Equally obvious is that the rank and file member possesses the capacity to interrupt commerce as a response to the arbitrary exaction of dues by a distant leadership. (See 29 USC § 402(a).) In the

absence of a sound and uniform rule on the issues here posed, the risk of such interruptions is clearly greater. Finally, a uniform rule is required to avoid the potentially large number of lawsuits that will arise from the controversy attendant with the decision below.

CONCLUSION

For the above-stated reasons, a writ of certiorari should issue to review the judgment and opinion of the Ninth Circuit Court of Appeals.

Dated: November 5, 1981

Submitted by,

Joe R. McCray
And Damian B. Smyth
Attorneys for Petitioners

Appendix A

Robert MORI and Sam Polino, on behalf of themselves and all others similarly situated, Appellees,

v.

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS LOCAL LODGE No. 6 and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, Appellants.

No. 79-4825.

United States Court of Appeals, Ninth Circuit.

Argued June 11, 1981.

Decided August 17, 1981.

Appeal from a Judgment of the United States District Court Northern District of Callfornia.

Before KENNEDY, ADAMS* and FLETCHER, Circuit Judges.

ADAMS, Circuit Judge.

This appeal presents the question whether § 101(a)(3) of the Labor Management Reporting and Disclosure Act (LMRDA) precludes the convention of an international

*Honorable Arlin M. Adams, United States Court of Appeals for the Third Circuit, sitting by designation.

union from establishing minimum dues for a single craft within affiliated local unions.

I.

The International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers (the International) represents employees engaged in shipbuilding, industrial production and field construction. Plaintiffs Robert Mori and Sam Palino represent a class of members of Local 6 of the International who are qualified to work in the construction trade. Prior to August 1977, the membership of Local 6 established its own rate for local dues by secret ballot election. Class members paid to Local 6 field dues of $4.00 per month in addition to regular monthly dues.

At a convention of the International held in August 1977, a majority of the delegates adopted a new dues structure applicable only to field construction members. The new structure required payment of not less than two percent of gross income to the local as a field dues supplement to regular local dues, unless the International president approved payment of a lesser amount. These amendments, which were incorporated into Article XX of the International's constitution, also established an additional dues requirement of one half of one percent of gross wages, to be collected by the local and forwarded to the International.

Beginning January 1, 1978, Local 6 collected from plaintiffs field dues of two percent of gross earnings plus regular local dues of $13.00 per month. The membership

of Local 6 has never approved the increase of field dues, and has attempted to adopt bylaws excluding the new field dues requirement. The membership also unsuccessfully sought permission from the president of the International to halt the collection of the supplemental dues.

In the district court, plaintiffs contended that imposition of the local field dues supplement violated their rights under § 101(a)(3) of the LMRDA, 29 U.S.C. § 411(a)(3), because the supplement was adopted without the approval of a majority of the Local 6 membership, and because it affected only field construction workers and not other members of the union. The district court granted plaintiffs' motion for summary judgment, enjoining continued collection of the two percent dues requirement, and directed repayment of all field dues increases that Local 6 had collected since January 1, 1978. The defendants filed a timely appeal.

II.

A single issue is presented on appeal: whether the district court erred in awarding summary judgment on the ground that § 101(a)(3) of the LMRDA interdicts the convention of an international union from establishing minimum dues for affiliated locals. It should be noted that the plaintiffs do not challenge the levy of one-half of one percent of gross income that is payable to the Local for transmittal to the International. Nor do plaintiffs question the procedural regularity of the convention. Rather, plaintiffs direct their contentions exclusively against the International's attempt, by majority vote at the convention, to increase the amount payable to the local union as local dues.

The applicable statute, § 101(a)(3) of the LMRDA, 29 U.S.C. § 411(a)(3), provides:

> (3) DUES, INITIATION FEES, AND ASSESSMENTS.—Except in the case of a federation of national or international labor organizations, the rates of dues and initiation fees payable by members of any labor organization in effect on the date of enactment of this Act shall not be increased, and no general or special assessment shall be levied upon such members, except—
>
> (A) in the case of a local labor organization, (i) by majority vote by secret ballot of the members in good standing voting at a general or special membership meeting, after reasonable notice of the intention to vote upon such question or (i) by majority vote of the members in good standing voting in a membership referendum conducted by secret ballot; or
>
> (B) in the case of a labor organization, other than a local labor organization or a federation of national or international labor organizations, (i) by majority vote of the delegates voting at a regular convention, or at a special convention of such labor organization held upon not less than thirty days' written notice to the principal office of each local or constituent labor organization entitled to such notice, or (ii) by majority vote of the members in good standing of such labor organization voting in a membership referendum conducted by secret ballot, or (iii) by majority vote of the members of the executive board or similar governing body of such labor organization pursuant to express authority contained in the constitution and

bylaws of such labor organization: *Provided*, that such action on the part of the executive board or similar governing body shall be effective only until the next regular convention of such labor organization.

The lone case to apply § 101(a)(3) to a situation similar to that presented here supports the International's position. In *Ranes v. Office Employees Union Local 28*, 317 F.2d 915 (7th Cir. 1963), the Seventh Circuit held that "the action of an international union pursuant to Section 101(a)(3)(B) of the Act increasing the constitutional minimum for dues payable by its members to their respective local unions can be enforced by an affiliated local union without first submitting the question of a dues increase to a vote of its members under section 101(a)(3)(A) of the Act." *Id.* at 917. The court predicated its holding on two considerations. First, although the legislative history of the Act "is silent" on the precise interpretive question, the court would not "assume that Congress was unaware of the traditional structure of dues practices" whereby an international prescribes the minimum dues payable to affiliated locals. The court found no basis for inferring that Congress intended "to strip international unions of their traditional power to control the minima and maxima of rates of dues." *Id.* Second, the court, while noting that the purpose of § 101(a)(3) is to protect the rights of union members, concluded that the plaintiffs had received all the protection the statute affords, insofar as their local was represented at the convention by a delegation elected by its members. The court found it "wholly illogical" that a vote of the members of a local

should be allowed to veto the action of a duly constituted convention.

The First Circuit's decision in *Local 2, International Bhd. of Telephone Workers v. International Bhd. of Telephone Workers*, 362 F.2d 891 (1st Cir.), *cert. denied*, 385 U.S. 947, 87 S.Ct. 321, 17 L.Ed.2d 226 (1966), also provides some support for finding power on the part of the International to raise local dues. In that case the International, at its regular convention, voted to increase retroactively both local dues and the charge per member each local paid to the International. Plaintiffs challenged the retroactive character of these amendments. The court invalidated the retroactivity of the dues hike, but went on to say: "There is no doubt that under the statute this convention could validly vote a general dues increase effective prospectively and to this extent we uphold its action." 362 F.2d at 896 (citing § 101(a)(3)(B)).

Plaintiffs place principal reliance on *Steib v. New Orleans Clerks and Checkers, Local 1497*, 436 F.2d 1101, 1106 (5th Cir. 1971), inferring from it a general rule that "in the case of a local labor organization, an increase of dues must be approved by the majority vote of the members in good standing voting by a secret ballot." *Steib* invalidated a three-cents per hour check-off that was to have been retained by the local, while upholding an additional three-cents check-off that would have been split between the international and the district labor organizations. Although a cursory reading of *Steib* might suggest that it holds an international or district union powerless to increase, by convention, dues payable to a local,

this interpretation is not justified, inasmuch as the opinion does not identify the source of the three-cents check-off retained by the local. This information, however, can be derived from *White v. King*, 319 F.Supp. 122 (E.D.La. 1970), which arose out of the same district convention whose enactments were at issue in *Steib*. *White v. King* points out that prior to the convention, the district and international unions divided dues of two cents; the convention approved an increase to three cents. Thus, of the six-cents check-off at issue in *Steib*, only three cents was earmarked for the district and international bodies, and only that three cents was authorized by the convention. The remaining three cents, intended for retention by the local, evidently was adopted by the local by a procedure other than that specified in § 101(a)(3)(A). *Steib* therefore does not speak to the authority of an international convention to raise local dues, but represents instead an application of the § 101(a)(3)(A) requirements to increases in local dues adopted by the local union.

The one case that seemingly endorses plaintiff's analysis of § 101(a)(3) is *White v. Local 207, Laborers' International Union*, 387 F.Supp. 53 (W.D.La. 1974), where the court held that a district convention could not set local dues for one single union local. The court in *White*, however, appeared to misunderstand the factual context of *Steib*, believing that the district convention in that case had adopted both the check-off retained by the local and that forwarded to the district organization; since *White v. Local 207* arose in the territorial domain of the Fifth Circuit, the district court regarded *Steib* as controlling. The authority of *White* is undermined in view of the *King*

court's description of the convention activities alluded to in *Steib*.[1]

As noted above, the Seventh Circuit in *Ranes* isolated two considerations supportive of an international's power to establish minimum local dues; legislative intent and adequate protection of union members' rights. Although there are no affirmative disclosures in the legislative history, the *Ranes* court assumed that Congress did not wish to upset established union practice. This general approach to interpretation of the LMRDA would appear vindicated by *American Fed'n of Musicians v. Wittstein*, 379 U.S. 171, 178, 85 S.Ct. 300, 304, 13 L.Ed.2d 214 (1964), in which the Supreme Court noted that although the statute and legislative history did not explicitly condone weighted voting at conventions, "in light of the fact that then [i.e. at the time of enactment] as now many large unions had provisions for weighted voting . . . it is very clear that weighted voting was not thought to be one of those abuses or forms of misgovernment [protected against by the

---

[1]No other case has been brought to our attention which addresses the issue of an international's power to regulate local dues under § 101(a)(3). *American Fed'n of Musicians v. Wittstein*, 379 U.S. 171, 85 S.Ct. 300, 13 L.Ed.2d 214 (1964), on which defendants rely, upheld dues increases adopted at a convention by a weighted voting system, whereby delegates from each local cast a number of votes equal to the local's membership. The dues at issue were payable to the international, and the Supreme Court did not have occasion to consider the proper procedure for increasing local dues. *King v. Randazzo*, 346 F.2d 307, 309 (2d Cir. 1965), held that the convention of an intermediate union could establish the dues payable to the intermediate union. Again, the question whether an intermediate union could determine the dues payable to locals was not before the court.

LMRDA]". *Ranes* did not, however, document traditional union practices. In the case at bar, the district court, in an opinion denying defendants' motion to dismiss the complaint, 482 F.Supp. 838, 842, took note of this evidentiary lacuna, and of defendants' failure, at the time of the motion, to produce evidence of customary practice. In light of the record before it, the district court declined "to take judicial notice of the asserted fact that international unions have traditionally set minimum local dues rates."

By the time the district court considered plaintiff's motion for summary judgment, however, defendants had prepared a short list of unions whose international constitutions established at the time of the passage of the LMRDA in 1959, a dues structure for affiliated locals. On appeal, defendants have submitted, with this Court's permission, a comprehensive appendix that reproduces constitutions dating from the time of passage of the LMRDA. These documents reveal that a significant number of unions with some of the largest memberships in the country had by 1959 adopted constitutions that set minimum, and in some cases maximum, local dues. These unions include the Teamsters, United Auto Workers, United Steelworkers, United Mine Workers, Brotherhood of Electrical Workers, and Hotel and Restaurant Employees. All of these unions currently retain similar constitutional provisions. Although the practice is not universal—the Ladies' Garment Workers did not have a local dues regulation in 1959 and the American Federation of Teachers still has none—the conclusion of *Ranes* that an international's

setting of local dues is part of "traditional structure and practices," 317 F.2d at 917, appears correct. In light of the Supreme Court's intimation in *Wittstein* that traditional practices are relevant to an interpretation of the Act, the existence in 1959 of local dues provisions in most major international union constitutions counsels in favor of the international's position in this case.

The Seventh Circuit in *Ranes* also found it significant that the union members, because they had been represented at the convention, had received the procedural protections of § 101(a)(3)(B). Similarly, plaintiffs in the present case were represented at a convention whose procedural regularity they do not dispute. But, unlike *Ranes*, the convention action at issue here did not uniformly raise the minimum local dues of all members in affiliated locals. Instead, construction workers, admittedly a minority within the international, were singled out for imposition of the two percent field dues requirement. Further, the convention vested discretion in the International president to approve exceptions to the minimum rate.

Notwithstanding the procedural regularity of the convention, there remains the question whether a dues increase uniquely affecting one division of workers and subject to suspension at the discretion of the president is within the range of substantive choices a convention may make without violating § 101(a)(3). One possible answer is that § 101(a)(3) places *no* substantive limitations on convention action concerning dues: as long as the convention is appropriately constituted it may establish local minimums in any way a majority of delegates select. Such

a position, however, might seem at odds with the congressional purpose of shielding union members from "arbitrary financial actions," *see* 105 Cong.Rec. 2668 (1959). In any event, this Court need not embrace so expansive a view of §101(a)(3)(B) in order to sustain the convention action. For the field dues increase at issue here was not enacted by the International for the general benefit of the International; rather, the dues collected will be retained by the local construction lodges for their own benefit. The action of the convention reflects the judgment of the entire union concerning the needs of the local lodges. The debate at the convention over the provision illuminates the background to the amendment and reflects that many construction workers supported the dues minimum.

Prior to 1977, the construction lodges within the international union had experienced difficulty competing with larger and better established construction unions, *see* C.R. 129 (remarks of Delegate Crippen) ("The Ironworkers are eating us alive in some areas; the Pipefitters in other areas"). Delegates complained of receiving only sporadic employment, *see* C.R. 130 (remarks of Delegate Meehan), of the occasional need for staff from non-construction locals to assist the construction lodges with pre-job conferences, *see* C.R. 134 (remarks of Delegate Hancock), and of agreements "in bad need of revision and upgrading," *see* C.R. 132 (remarks of Delegate George). The minimum dues requirements were perceived as a source of revenues to enable the local construction lodges to address these problems. *See, e.g. id.;* C.R. 129 (remarks of Delegate Mulligan) ("Without this, . . . we are going to go down the drain and lose a lot of jurisdiction to the

larger, better organized crafts that are trying to eat us up right now.").

Despite some sentiments expressed in favor of local democracy, the convention ratified the constitutional amendment and rejected a proposal to make imposition of the two percent minimum contingent upon approval by the membership of the particular local union. The record does not reflect an attempt on the part of a majority of the international to exploit or discriminate against the minority of construction workers. Instead, the convention's action appears to reflect the judgment of the majority concerning the measures necessary to enhance the vitality of the construction lodges. This inference is substantiated by the fact that the increase is to be used by and for the construction workers. As in *Ranes*, the participation of delegates representing plaintiffs ensured their rights under § 101(a)(3)(B), and there is no reason in this case to distrust the democratic process at work at the convention.[2]

---

[2]It should be noted, however, that in *White v. Local 207*, 387 F.Supp. 53 (W.D.La. 1974), the district court overturned a district council's increase in the local dues of a particular local. The court in *White* stated: "A holding that a district convention could set local dues for one single local union would be to completely sterilize the provisions of § 101(a)(3)(A). *Id.* at 56. On the other hand, the court indicated that an international "may set across the board increases in dues to be paid by local union members to their locals." *Id.* The case at bar, of course, is midpoint between *White* and *Ranes*. The increase affects neither a single local nor all locals, but all locals within a single craft. However, because *White* addressed the manner in which a single local may raise its own dues, the reasoning of *Ranes*, which pertains to an International's authority, would seem more applicable to the present case.

III.

Established practice at the time of enactment of the LMRDA, left untouched by Congress, allowed international unions to establish the dues structures of affiliated locals. Although the dues increase at issue here affects only construction workers, no evidence in the record suggests that this disparity will work to the advantage of other members of the International. Since we cannot conclude that the action of the convention was unlawful, the judgment of the district court is reversed.

Appendix B

In the United States District Court
for the Northern District of California

No. C-78-2759-SAW

Robert Mori and Sam Polino, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local Lodge No. 6, and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO,

Defendants.

[Filed Nov. 5, 1979]

Judgment

This matter came on for hearing on Plaintiffs' motion for summary judgment, pursuant to an order of this Court, on September 6, 1979 before the Honorable Stanley A. Weigel, Judge of the District Court. The issues were argued, and an order granting the motion has been duly made. Therefore,

It is Ordered, Adjudged and Decreed that the Defendants, each and both, be and hereby are permanently enjoined from collecting or requiring the collection as local dues of 2% of the gross wages (including vacation pay) earned by members of International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers of America, Local Lodge No. 6 (hereafter referred to as Local 6) from construction or maintenance work, and from collecting or requiring the collection of any dues whatever, unless and until the amount thereof shall have been approved: (i) by majority vote by secret ballot of the members in good standing, voting at a regular or special membership meeting after reasonable notice of the intention to vote upon such question; or (ii) by majority vote of the members in good standing, voting in a membership referendum conducted by secret ballot, *provided*, however, that the Defendants may continue to collect existing local monthly dues of $13.50 per month, local field dues of $4.00 per month, and the ½% of gross earnings as the field dues supplement required by Article XX, section 3(b) of the Constitution of the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO.

It is Further Ordered, Adjudged and Decreed that each member of the class certified by the order dated August 31, 1979 be reimbursed by Defendant Local 6 in an amount equal to the local field dues paid by each since January 1, 1978, plus 7% annual interest from the date of each payment, less $4.00 per month for each.

It Is Further Ordered, Adjudged and Decreed that the stipulation of the parties for a partial stay upon appeal is approved. The Defendants shall be permitted to continue the collection of the 2% of gross wages (including vacation pay) from the class pending appeal, *provided* that such payments shall not be used by the Defendants, but deposited, as made, in an interest bearing account in First Enterprise Bank, said account being blocked and subject to disposition by further order of this Court; *provided further* that said First Enterprise Bank is authorized to remit once each month to Defendant Local 6 the sum of $4.00 for each member of the class who worked one or more days in the preceding calendar month under the jurisdiction of Local 6 in the field construction industry. The Defendant Local 6 shall certify in writing to First Enterprise Bank once each month the names of those members of the class who are obligated to pay the $4.00 local field dues, with a copy of such writing to be provided counsel for the Plaintiffs.

It Is Further Ordered, Adjudged and Decreed that (the Court having found that the membership of the International and of Local 6 has gained a common benefit from this action, within the meaning of Hall v. Cole, 412 U.S. 1, 93 SCt. 1943 (1973)), the Plaintiffs recover from Defendants their attorneys fees in the amount of $5,319.04, and their costs of litigation in the amount of $70.29.

Let Judgment enter accordingly.

Dated: 11/5/79

/s/ STANLEY A. WEIGEL
Stanley A. Weigel
Judge, U. S. District Court

Approved as to form:
Blake & Uhlig

By /s/ JOSEPH W. MORELAND
Joseph W. Moreland

Law Offices of Charles P. Scully

By /s/ DONALD C. CARROLL
Donald C. Carroll

Opposition

Office - Supreme Court, U.S.
FILED
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ALEXANDER L. STEVAS
CLERK

No. 81-847

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

ROBERT MORI and SAM POLINO, on behalf of themselves and all others similarly situated,
Petitioners,

v.

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS LOCAL LODGE NO. 6 and INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS, AFL-CIO,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-847

ROBERT MORI and SAM POLINO, on behalf of themselves and all others similarly situated,
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INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS LOCAL LODGE NO. 6 and INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS, AFL-CIO,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

The decisions below, the basis on which this Court's jurisdiction is invoked and the statutory provision involved, § 101(a)(3) of the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 411(a)(3), are set out at pp. 1-3 of the petition for a writ of certiorari (hereafter cited as "Pet".).

STATEMENT OF THE CASE

A. The Facts

The International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO (the "International") represents employees engaged

in various kinds of work, primarily shipbuilding, industrial production, and field construction. This lawsuit involves those members engaged in field construction.

Prior to 1977, the dues of the Union's construction members were fixed by their local union's by-laws subject to a minimum mandated by the International Constitution. Local 6, to which plaintiffs belong, prescribed regular monthly dues plus an additional fixed monthly sum as "field dues", apparently in recognition of the additional responsibilities imposed upon the Local in representing this particular group.

At the 1973 International Convention, the International President and executive officers committed the International to develop a new program to deal with the special problems of the Union's construction members.

In 1977 pursuant to that commitment, a comprehensive program was presented to the delegates at the ensuing quadrennial International Convention by the Construction Committee and the Law Committee. The program called for the establishment of a new Construction Division within the International to improve the lot of the Union's construction members and to better represent them at all levels.

The presentation to the 1977 Convention and the ensuing debate among the delegates illuminate the particular problems facing the Union's field construction branch. These included: intense jurisdictional disputes with larger and better-established construction unions which left construction boilermakers, in the words of one delegate, "consumed and devoured by our competitive crafts"; alarming incursions by non-union construction companies; collective bargaining agreements "in bad need of revision and upgrading"; and a high-paying but sporadic employment picture, typical of the construction industry, but contrasting sharply with shipbuilding and factory work, the Union's other basic jurisdictions, where

jobs are steadier, job sites are fixed and not transient, and the local unions are not required to operate hiring halls, obtain employment for their members, or police a constantly shifting employment pattern among often overlapping crafts. One delegate stated that the representation of field construction workers in the construction lodges was being "carried" by personnel from the shipbuilding and industrial groups. Several delegates, particularly those from locals with a significant concentration of construction members, strongly urged support of the proposed program, including the dues increases necessary to finance it, warning that otherwise the construction segment of the union would "go down the drain."

In order to finance these activities, the Construction and Law Committees proposed to the Convention a new Article XX, Section 3, imposing a field dues supplement for the International's Construction Division Fund of one-half of one percent (.005) of the members' gross income from construction work, and requiring locals with construction jurisdiction, effective January 1, 1978, to charge field dues in such amount as is set in the Local By-Laws but "not less than two percent" (.02) of the gross income derived from construction work. The International President was empowered to approve a lesser amount. Under the proposed Constitutional amendment, the entire field dues would be paid by the members to their respective locals, and the locals would then transmit to the International Secretary-Treasurer the one-half of one percent field dues supplement for deposit in the Construction Division Fund, with the local retaining the balance.

Although the establishment of a Construction Division and the undertaking of new efforts to revitalize the construction branch of the Union were unanimously approved, the presentation of the proposed Section 3 on funding of those efforts was promptly followed by a motion to amend the resolution by deleting the entire Section. After extensive debate, the motion to delete

was defeated. Thereafter, another amendment was proposed to retain the one-half of one percent levy for the International, but to make the imposition of the two percent minimum local field construction dues contingent upon approval by the membership of the particular local. This "local option" proposal was also extensively debated, put to a vote, and defeated. The Convention then adopted the proposal of the Law Committee, and the International Constitution was amended accordingly.

Pursuant to the constitutional mandate, the constituent Boilermaker locals began charging the new field construction dues, effective January 1, 1978. On November 29, 1978, nearly a year later, this action for an injunction and return of the dues increase was instituted.

B. The Proceedings Below

In their complaints, plaintiffs did not challenge the procedural regularity of the convention action establishing the minimum dues level for construction work. Rather, they urged that under § 101(a)(3) of the LMRDA, the International Convention was powerless to set minimum dues payable to the affiliated locals represented at the Convention, on the theory that only the membership of a local union is statutorily empowered to increase local union dues. Plaintiffs did not attack the new one-half percent levy payable to the International; and the judgment below likewise did not purport to affect that levy.

The District Court after denying the Union's motion to dismiss granted plaintiffs' motion for summary judgment and subsequently entered judgment enjoining the 2% dues requirement and directing repayment of all field dues increases collected by Local 6 since the effective date of the 2% minimum. (Pet. App. A-14 to A-17.)

An appeal to the Ninth Circuit followed and that court in a thorough opinion concluded that § 101(a)(3)(B) permits the International Union action challenged in this suit. (Pet. App. A-1 to A-13.)

ARGUMENT

1. There Is No Conflict In the Courts of Appeals As To The Meaning of § 101(a)(3) of the LMRDA.

In the instant case, the Ninth Circuit concluded that § 101(a)(3)(B) of the LMRDA, as the plain statutory language says, permits international unions, acting, as was done here, "by majority vote of the delegates voting at a regular convention," to set the dues payable by their members both to the international and to the international's affiliated local unions.

That ruling and the supporting reasoning track the holding and reasoning of *Ranes* v. *Office Employees Union*, 317 F.2d 915 (C.A. 7, 1963), the only other Court of Appeals decision in which the precise issue presented here was the primary issue, and the secondary holding of *Local 2, Telephone Workers* v. *International Brotherhood of Telephone Workers*, 362 F.2d 891 (C.A. 1, 1966), *cert. denied*, 385 U.S. 947. So far as we have found or petitioners show, there is not a single other Court of Appeals decision touching on the § 101(a)(3) issue presented here, much less one in conflict with the decisions in the instant case, in *Ranes* and in *Telephone Workers*.

(a) In a well-reasoned opinion, the *Ranes* Court first noted that ¶(A) of § 101(a)(3) (dealing with local union procedures for increasing membership dues) and ¶(B) (dealing with international union procedures), on their face, state alternative methods of increasing dues:

> Section 101(a)(3) relates, in its entirety, to "*the rates of dues* and initiation fees *payable by members* of" labor organizations. It provides that rates of dues in effect on September 14, 1959, may not be increased except by the methods therein prescribed. The method prescribed for increases in dues by a local union is a majority vote of its members. On the other hand, subsection (B) prescribes alternative methods by which an international union may in-

> crease "rates of dues", which include the submission of the question to the delegates at its convention. [317 F.2d at 917 (emphasis in original.)]

If the amount of dues the member must pay is increased, the member is affected in the same fashion and to the same extent, whether his money goes to a local union or to an international union. Thus, there is no basis in reason for placing greater or lesser inhibitions on the ability of different types of labor organizations to increase dues. As *Ranes* recognizes, Congress therefore structured § 101(a)(3) along functional lines. When a local union acts, direct participation makes sense (just as it does in any local entity) and is provided for in ¶(A). When an international union acts, representative democracy makes sense (just as it does in any nationwide entity) and is one of the options provided for in ¶(B). In Congress' judgment, this is not a matter of greater or less democracy. Neither of these modes of democratic self-government is favored or disfavored.

The Seventh Circuit then noted that in 1959 many international unions did, in fact, impose minimum local union dues, and explicated the sound policy reasons for that practice:

> Traditionally, international unions have exercised primary jurisdiction over affairs of their affiliated local unions, including the control of the local dues structure sufficient to insure the financial health of the union structure. Many international unions exercise control in the latter sphere of interest by the device of prescribing the minimum rate for the dues which each of their locals shall collect from its members. We cannot assume that Congress was unaware of the traditional structure and dues practices of labor unions when it enacted 101(a)(3), or that Congress, being aware of the traditional structure and practices, intended by enacting that Section to strip international unions of their traditional power to control the minima and maxima of rates of dues without one word in the Committee Reports expressing that

> intention. On the contrary, we must assume that Congress was aware of the established structure and practices and interpret the statute in the light thereof. Cf., *Perrine* v. *Chesapeake & D. Canal Co.*, 9 How. 172, 50 U.S. 172, 187-188; *Local 1976, Etc.* v. *N.L.R.B.*, 357 U.S. 93, 98-101. [Id. at 918].

On these grounds the *Ranes* court "rejected [the] argument that [§ 101(a)(3)(B)] should be interpreted to apply [only] to per capita taxes" and held:

> [T]he action of an international union pursuant to Section 101(a)(3)(B) of the Act increasing the constitutional minimum for dues payable by its members to their respective local unions can be enforced by an affiliated local union without first submitting the question of a dues increase to a vote of its members under the provisons of Section 101(a)(3)(A) of the Act. [Id. at 917].[1]

In the *Telephone Workers* case, *supra*, the international sought to increase the minimum dues paid by its members to their local unions. Initially, the international sought to proceed through a form of referendum which failed to comply with the referendum procedures permitted under § 101(a)(3). About ten months later, the international's convention adopted the same increase through constitutional amendment. The First Circuit invalidated the dues increase collected during the initial ten-month period because of the international's failure

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[1] Petitioner's seek to distinguish *Ranes* on the ground that it is not clear in *Ranes* whether the increase in minimum dues did, in fact, effect an increase in the actual dues payable by members of local unions. (Pet. 12.) This is wrong. The *Ranes* opinion makes crystal clear that the local union involved had previously charged $2.00 per month, that the international's action resulted in an increase to $3.00 a month (50%) and that the members had been advised that their dues would be increased by that amount, this advice being the factor that precipitated the lawsuit. (317 F.2d at 916.)

to follow any of the procedures specified by § 101(a)(3). However, that court upheld the convention action in imposing increases in local dues payable by members of plaintiff local, holding, "There is no doubt that under the statute this convention could validly vote a general dues increase prospectively and to this extent we uphold its action." (362 F.2d at 896.)

Thus, the two earlier Courts of Appeals opinions that plainly treat with the § 101(a)(3) question presented here are in accord with the decision below.

(b) In ruling on the petitioners' application for a stay of the Court of Appeals' mandate herein Justice Rehnquist stated that the decision below "seems to me to be contrary to the decision of the Court of Appeals for the Fifth Circuit in *Steib* v. *New Orleans Clerks and Checkers Local 1497*, 436 F.2d 1101 (1971)." *Steib* was not addressed in the 5-page memorandum filed in opposition to the stay application and we therefore treat with that decision at some length at this point to show that there is no conflict.

Petitioners, both in their stay papers and in the petition, argue that in *Steib* the Fifth Circuit invalidated, as inconsistent with § 101(a)(3), an intermediate labor organization's constitutional provision prescribing minimum local union dues. (See Pet. 11.) In fact, the intermediate body in that case had *no* such provision in its constitution. The intermediate body's constitution provided solely for a per capita tax (a type of dues payment the petitioners concede such a body may set by convention action) and did not regulate its local unions' dues (the type of dues payment petitioners contend may only be set by local union action). (Cf. Pet. 5.) The district court's findings and conclusions in *Steib* are ambiguous with respect to the terms of the intermediate body's constitution, and the Fifth Circuit's two paragraph *per curiam* affirmance is terse and factually un-

enlightening.[2] But the underlying facts are more clearly stated in *White* v. *King*, 319 F. Supp. 122 (E.D. La. 1970), a companion case to *Steib* arising out of the same situation.

It appears that at the time in question the International Longshoremen's Association's South Atlantic & Gulf Coast District, by convention action, imposed a per capita levy payable by members to the District and to the ILA, and had in 1968 by convention action increased that levy from two cents per hour to three cents per hour.[3] Thereafter, the New Orleans locals of the ILA

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[2] The Fifth Circuit's *Steib* opinion in its entirety reads as follows:

> From the District Court's Order enjoining the collection and retention of increased dues by Local No. 1497, Steib and Local No. 1497 appeal. Both assert that the court has misconstrued 29 U.S.C.A. § 411. Steib contends that the District Court erred in refusing to preliminarily enjoin a check-off of three cents per hour for the International Longshoremen's Association and the South Atlantic and Gulf Coast District, even though the method of computing these dues was specifically approved by a majority of delegates voting at the District's regular convention. *See* 29 U.S.C.A. § 411(a)(3)(B)(i). Local No. 1497 argues that the District Court misdefined the substance of the check-off: it urges that, with respect to the local, funds checked off comprised a service charge, not dues. However, neither party seriously challenges the District Court's findings of fact.
>
> Discerning no merit in either appellant's legal position, we affirm. We approve and adopt the reasons articulated by the District Court in its findings of fact and conclusions of law appended below. The judgment appealed from is Affirmed.

[436 F.2d at 1102-1103].

[3] The "Constitution of South Atlantic and Gulf Coast District, International Longshoremen's Association, June, 1968 Amended at Brownsville, Texas" was provided to the court below as Appendix B to the Union's brief. That Constitution does not contain a word concerning the dues payable to local unions. Rather, Article VIII,

negotiated with their employers a six cents per hour "check-off." That amount included the three cents levied by the district and payable to that body and the international. The additional three cents per hour, however, was *not* authorized by any international or district requirement, and it was *never* put to the local membership for a secret ballot vote. Thus, that portion of the check-off was not approved by any of the procedures specified either in ¶(A) or ¶(B) of § 101(a)(3). The *Steib* and *White* cases followed and the local unions defended their

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the only provision on the subject of dues, relates solely to the required payment to the district and to the international:

ARTICLE VIII

Section 1. The revenues of the South Atlantic and Gulf Coast District of the International Longshoremen's Association shall be derived from a per capita tax of Fifty (50¢) Cents per member per month, payable to the District Secretary-Treasurer, quarterly, in advance, for each twelve month period from January 1st, to December 31st.

Locals working under an I.L.A. contract shall pay the International and the District a service charge of three cents (3¢) per man hour through the District Office. Locals that pay a service charge check-off shall not be required to pay in addition thereto a per capita tax to the International and the District.

Locals not working under an I.L.A. contract and Locals without the service charge check-off of three cents (3¢) per man hour shall pay their International tax to the International and pay their District per capita tax Fifty Cents (50¢) per member per month to the South Atlantic and Gulf Coast District I.L.A.

Section 2. All Locals are held responsible for payment for the difference between the actual hours worked through each Local and the hours on which service charge check-off is withheld and paid to the District, International, and/or to the Locals.

Section 3. Whenever the Executive Board finds it necessary to levy an assessment, the Secretary shall notify all locals of the amount. All assessments to be forwarded to the Secretary within three days after notification.

imposition of the three cents per hour payable to the locals on the ground that the levy did not constitute dues at all but a service charge applicable to members and non-members alike. The courts in *Steib* and in *White* rejected this defense and invalidated the three cents payable to the locals as having neither international or district or local approval, while *upholding* the three cents per capita levy prescribed in the district constitution.[4]

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[4] The pertinent portions of the *White* opinion are the following:

> This suit arose in the aftermath of the longshoremen's strike of 1968. On February 25, 1969, the members of Local 854 of the Dockloaders and Unloaders of Freight Cars and Barges I.L.A. voted on a proposed new contract settling the strike. Included in that vote was a proposal to raise union dues from two cents an hour to six cents an hour by a check-off authorization plan. Both proposals were passed by standing vote of a majority of the membership. Plaintiffs Oliver W. White and Melvin Wynne, longshoremen in good standing, and members of the local, did not vote on these proposals and refused to pay the dues increase claiming that the vote was taken in violation of certain provisions of the Labor Management Reporting and Disclosure Procedure Act (hereafter LMRDA).
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> Plaintiffs' main contention is that under [29 U.S.C.] § 411 (a) (3) (A) * * *, any increase in dues not by a secret ballot is invalid. Consequently, they seek to enjoin the union from collecting the four cents dues increase. Defendants, on the other hand, argue that no injunction should issue since plaintiffs have failed to show any prejudice resulting from the standing vote.
>
> We are unable to perceive the basis of defendants' argument. Section 411(a)(3)(A) requires in clear and unmistakable language a secret ballot for any dues increase. A requirement of prejudice is nowhere mentioned.
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> • • • •
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> Intervenor, South Atlantic & Gulf Coast District, and defendants, point out that the two cents dues paid prior to the increase went to South Atlantic pursuant to its Constitution. In June 1968, at a regular convention in Brownsville, Texas,

Thus, the basis in *Steib* and in *White* for invalidating the check-off in part was that the check-off was subject to § 101(a)(3) and insofar as it was defective had not been implemented by any of the procedures allowed by ¶¶(A) or (B) thereof. It was not held in either of those cases that local dues may not be raised by the convention of an international or of an intermediate body pursuant to § 101(a)(3)(B) because no contention was made (or could have been made) that the increase in the monies payable to the locals had been adopted pursuant to § 101(a)(3)(B).

2. The Decision Below Is In Accord With This Court's Construction of § 101(a)(3) In *Musicians Federation* v. *Wittstein*, 379 U.S. 171.

Petitioners object to the "essential holding of the Ninth Circuit [—] that an increase in dues payable to local unions may be imposed by a majority of delegates at an international convention." (Pet. 6.) Their contention is that "local union dues may be raised only by secret ballot or referendum, and international dues by, *inter alia*, convention." (Pet. 8). And they invoke in support of that contention (*id.*) this Court's sole § 101(a)(3) decision—*Musicians Federation* v. *Wittstein*, 379 U.S.

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this amount was increased to three cents. Such increase, they argue, is binding on local union members through Article 8 of the Constitution of South Atlantic & Gulf Coast District, and § 411(a)(3)(B) does not require that an increase in dues of a national or district union be by secret ballot. We must agree that § 411(a)(3)(B) does not require a secret ballot in all occasions but permits dues increases by majority vote at a regular convention as was done here. Ranes v. Office Employees Int'l Union Local No. 28, 317 F.2d 915 (7th Cir. 1963).

Therefore, it is ordered, adjudged and decreed that of the four cents increase voted on by the members of Local 854 on February 25, 1969, the one cent due the intervenor, South Atlantic & Gulf Coast District, I.L.A., is valid and only the three cents earmarked for Local 854 is invalid.

[319 F. Supp. at 123-125.]

171.[5] *Wittstein* involved the validity under § 101(a)(3)(B) of weighted voting when an international convention acts on a proposed dues increase. This Court held that nothing in that section prohibits such weighted voting. And the analysis of § 101(a)(3) in that case shows that the decision below is correct.

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[5] None of the court of appeals cases cited at Pet. 8-10 were decided under § 101(a)(3), and for that reason alone are totally inapposite. Moreover, with a single exception, none of them even involve the raising of union dues.

That exception is *United Brotherhood of Carpenters* v. *Brown*, 343 F.2d 872 (C.A. 10, 1965), which arose under Title III of the LMRDA, the provision governing trusteeships. There the trusteeship had been imposed in order to require the local union to raise its dues, the local having refused to do so in a membership vote. The Tenth Circuit held that the trusteeship violated § 302 of the LMRDA, 29 U.S.C. § 462, first because the international constitution and bylaws did not authorize the international's action (343 F.2d at 881-882), and, second, because in that court's view Title III does not authorize an international to impose a trusteeship on a local on the ground that its membership had turned down an increase in local dues (*id.* at 882-883). There is no suggestion in the Tenth Circuit's opinion that Title III in any way limits an international's authority to act directly on the question of a minimum rate of local union dues in the manner permitted by § 101(a)(3)(B). The present case does not involve a trusteeship, and the challenged increase in union dues was authorized by the International Constitution, by virtue of the Convention action which petitioners challenge.

It is significant, given petitioners' broad local-union-autonomy argument based on Title III (Pet. 8-10), that, as the definition of "trusteeship" in 29 U.S.C. § 402(h) makes plain, Title III only limits the "method[s] of supervision of control whereby a labor organization suspends the autonomy *otherwise available* to a subordinate body under its constitution or bylaws." Thus, Title III does not specify what may be regulated by internationals through their constitutions and what may not. All that title does is state the grounds and procedures for withdrawing such local autonomy as the international's constitution provides. Provisions extensively affecting and circumscribing the conduct of the affairs of local unions are therefore found in virtually all international constitutions.

The *Wittstein* opinion emphasizes, as do *Ranes* and the opinion below, the importance of trade union practice at the time of the enactment of the LMRDA. This Court also stressed the lack of any legislative history indicating that the established practice in question was one of the evils at which the statute was aimed:

> In light of the fact that then as now many large unions had provisions for weighted voting by delegates at a convention, it is very clear that weighted voting was not thought to be one of these abuses or forms of misgovernment. [379 U.S. at 178.]

As the court below recognized, international union control over the minimum dues charged by affiliated locals was at least as common a practice:

> On appeal, defendants have submitted, with this Court's permission, a comprehensive appendix that reproduces constitutions dating from the time of passage of the LMRDA. These documents reveal that a significant number of unions with some of the largest memberships in the country had by 1959 adopted constitutions that set minimum, and in some cases maximum, local dues. These unions include the Teamsters, United Auto Workers, United Steelworkers, United Mine Workers, Brotherhood of Electrical Workers, and Hotel and Restaurant Employees. All of these unions currently retain similar constitutional provisions. Although the practice is not universal—the Ladies' Garment Workers did not have a local dues regulation in 1959 and the American Federation of Teachers still has none—the conclusion of *Ranes* that an international's setting of local dues is part of "traditional structure and practices," 317 F.2d at 917, appears correct. [Pet. App. A-9 to A-10].

Moreover, there is not a word in the LMRDA legislative history that this practice was considered an abuse or a form of misgovernment.

Wittstein's review of § 101(a)(3)'s legislative history (379 U.S. at 176-181) establishes that the regulation of

dues increases was eased as the LMRDA progressed through Congress, in response to criticism that the original bills unduly restricted the power of international unions to impose such increases. Senator McClellan's purpose, as he stated in introducing the amendment that ultimately emerged as § 101(a)(3), was to prevent arbitrary increases by fiat of union officials. (105 Cong. Rec. 6477.) Neither his bill nor the subsequent, less restrictive versions evinced any concern with the well-established grant to parent organizations of the power to assure, through accepted procedures of representative government, the financial ability of chartered locals to discharge their responsibilities.

After the Senate had acted, AFL-CIO President George Meany, in testimony to the House Labor Committee, argued that the Senate had "intended" to "permit changes in dues and assessments by every method which unions generally employ except action by a general executive board or similar body" and that the provision's language should be altered to reflect that intent. (Hearings Before a Joint Subcommittee of the Committee on Education and Labor, House of Representatives, 86th Cong., 1st Sess., on H.R. 3540 * * * and Related Bills Regarding Labor-Management Reform Legislation, pp. 1517-1518.) The *Wittstein* Court recognized that the House made the changes necessary to embody in the final legislation the Senate's intent as described by Mr. Meany. His testimony is the sole legislative history predicate for the proposition that "The [House] Committee responded by expanding the permissible methods of raising dues [stated in the Senate Bill]" (371 U.S. at 180). As the Court also recognized in *Wittstein*:

> In light of the fact that the House changes were in the direction of affording unions more latitude for raising dues and the fact that no one, in the House or Senate, perceived that the House version would restrict voting at a convention to a head count of the delegates, we think it abundantly clear that § 101(a)

> (3) (B) was intended to guarantee a member's "right to participate in deciding upon the rate of dues, initiation fees and assessments," H.R. Rep. No. 741 on H.R. 8342 at 7, 1 Leg. Hist. 765, but not to bar a well-known system of voting embodied in many union constitutions which well serves that end. [379 U.S. at 181].

Following the same analysis, it is likewise "abundantly clear" that § 101(a)(3) was intended to "guarantee" membership participation in "deciding upon" dues increases through one of the forms of direct or representative government specified in that Section, "but not to bar a well-known" practice whereby international unions assure the financial stability of their affiliated locals by international convention action and pursuant to provisions "embodied in many union constitutions which well serves that end."

Finally, and contrary to petitioners' central contention, *Wittstein* establishes that dues increases through representative government action rather than through direct democracy, is a legitimate alternative procedure, and not a disfavored method grudgingly given the narrowest scope. The *Wittstein* Court emphasized that § 101(a)(3) expressly "authorizes a representative system of government," and quoted the Senate Report that upholding union democracy "is not to say that in order to have democratically responsive unions, it is necessary to have each union member make decisions in detail as in a New England town meeting." (379 U.S. at 182, n. 21).[8]

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[8] Petitioners object to the International Convention's action also insofar as it authorized the International President to excuse particular local unions from the increase sought by the convention. (Pet. Question No. 3, & p. 14.) Petitioners cite no authority for invalidating this provision, and make no showing that their objection thereto is of sufficient importance to merit this Court's attention. In any event, their contention is without substance, since § 101(a)(3) deals only with the *increase* of dues, and not with their reduction or with maintaining them at the same level. (See *Williams* v. *International Typographical Union, AFL-CIO*, 423 F.2d 1295 (C.A. 10, 1970), *cert. den.*, 400 U.S. 824.)

CONCLUSION

For the above stated reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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